

LIONEL Z. GLANCY (#134180)
MICHAEL GOLDBERG (#188669)
ROBERT V. PRONGAY (#270796)
GLANCY BINKOW & GOLDBERG LLP
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160
E-mail: info@glancylaw.com
lglancy@glancylaw.com
mmgoldberg@glancylaw.com
rprongay@glancylaw.com

Marc I. Gross
Jeremy A. Lieberman
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665
E-mail: migross@pomlaw.com
jalieberman@pomlaw.com

Patrick V. Dahlstrom
POMERANTZ LLP
Ten South La Salle Street, Suite 3505
Chicago, Illinois 60603
Telephone: (312) 377-1181
Facsimile: (312) 377-1184
E-mail: pdahlstrom@pomlaw.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ABDUL AWAD, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

HERBALIFE LTD., MICHAEL O.
JOHNSON, DESMOND WALSH, JOHN
DESIMONE, and RICHARD GOUDIS,

Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

DEMAND FOR JURY TRIAL

1 Plaintiff Abdul Awad (“Plaintiff”), individually and on behalf of all other
2 persons similarly situated, by his undersigned attorneys, for his complaint against
3 defendants, alleges the following based upon personal knowledge as to himself and
4 his own acts, and information and belief as to all other matters, based upon, *inter alia*,
5 the investigation conducted by and through his attorneys, which included, among
6 other things, a review of the defendants’ public documents, conference calls and
7 announcements made by defendants, United States Securities and Exchange
8 Commission (“SEC”) filings, wire and press releases published by and regarding
9 Herbalife Ltd. (“Herbalife” or the “Company”), analysts’ reports and advisories about
10 the Company, and information readily obtainable on the Internet. Plaintiff believes
11 that substantial evidentiary support will exist for the allegations set forth herein after a
12 reasonable opportunity for discovery.
13
14
15
16
17

18 **NATURE OF THE ACTION**

19 1. This is a federal securities class action on behalf of a class consisting of
20 all persons other than defendants who purchased or otherwise acquired Herbalife
21 securities between May 4, 2010 and April 11, 2014, both dates inclusive (the “Class
22 Period”), seeking to recover damages caused by defendants’ violations of the federal
23 securities laws and to pursue remedies under § 10(b) of the Securities Exchange Act
24 of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder against the
25 Company and certain of its top officials.
26
27
28

1 2. Herbalife is a network marketing company that sells weight management,
2 nutritional supplement and personal care products. The Company sells its products
3 globally through a network of independent distributors, which are typically
4 individuals with little marketing expertise that were induced by the Company to
5 purchase the Company's products in the hope that they would be able to resell the
6 product to other consumers or distributors. Herbalife also sells literature and
7 promotional materials to these distributors.
8

9
10
11 3. Throughout the Class Period, Defendants made materially false and
12 misleading statements regarding the Company's business, operational and compliance
13 policies. Specifically, Defendants made false and/or misleading statements and/or
14 failed to disclose that: (i) the Company's operations were based on a pyramid scheme
15 whereby its distributors generate revenue by recruiting other distributors rather than
16 selling Herbalife's diet and nutritional products to the general public; (ii) the
17 Company engaged in deceptive trade practices where it unduly pressured its members
18 to purchase more products to resell as one of its "distributors"; and (iii) as a result of
19 the above, the Company's financial statements were materially false and misleading at
20 all relevant times.
21
22

23
24 4. On December 19, 2012, CNBC reported that Bill Ackman ("Ackman"),
25 Founder and Chief Executive Officer of Pershing Square Capital Management, L.P.
26
27
28

1 (“Pershing”) considers Herbalife to be a pyramid scheme after spending a year
2 researching the Company’s fundamentals.

3
4 5. On this news, Herbalife stock declined \$5.16 per share, or over 12%, to
5 close at \$37.34 per share on December 19, 2012.

6
7 6. On December 20, 2012, Ackman conducted a presentation concerning
8 Herbalife at the Sohn Investment Conference where he affirmed his conclusion that
9 Herbalife is a pyramid scheme as its distributors make more money by recruiting
10 other distributors than selling the Company’s products to the general public.
11 Specifically, Ackman alleged that since the founding of the Company, approximately
12 1.9 million distributors have failed to make any money from selling Herbalife
13 products, costing them a net loss of \$3.8 billion.

14
15
16 7. On this news, Herbalife stock declined an additional \$10.07 per share, or
17 over 27%, over the next two trading sessions, to close at \$27.27 per share on
18 December 21, 2012.

19
20 8. On January 9, 2013, the New York Times reported that the Securities and
21 Exchange Commission had opened an investigation into the Company.

22
23 9. On January 15, 2014, a leading Chinese newspaper reported that Nu Skin
24 Enterprises, Inc. (“Nu Skin”), a company that operates in the same industry and uses a
25 similar business model as Herbalife, was an illegal pyramid scheme in China, and
26 employs unlawful and immoral business practices in violation of PRC law.
27
28

1 10. Then, on January 16, 2014, Nu Skin disclosed that its business practices
2 were indeed under investigation by Chinese authorities, stating in relevant part:

3 We are aware that Chinese regulators have now initiated
4 investigations to review issues raised by recent news reports. The
5 government regularly monitors all businesses in this rapidly
6 growing marketplace, and as is our practice, we will continue to
7 communicate openly with regulators to address any questions they
8 may have.

9 11. On this news, Herbalife stock, over the two trading days of January 15,
10 2014, and January 16, 2014, declined \$9.16 or over 11%, to close at \$71.63.

11 12. On January 23, 2014, U.S. Senator Edward J. Markey of Massachusetts
12 sent letters to federal regulators, including the SEC and the FTC urging them to
13 investigate Herbalife. Mr. Markey also sent a letter to Herbalife's chief executive,
14 Michael O. Johnson asking several questions about the company's business, including
15 pointed requests that reflected the concerns raised by Ackman in December 2012.
16 Some of the questions asked in the letter to Herbalife include: (1) "How much profit
17 (net earnings after expenses) can the average distributor expect to make from retailing
18 to non-distributors (i.e., people who are not directly involved in Herbalife
19 themselves)?" and (2) "What's the correct number of sales outside the network as a
20 percentage of total sales" for each of the last five years and information on these sales
21 measured by product, quantity and dollars.
22
23
24
25
26

27 13. Senator Markey urged both the FTC and SEC to examine whether
28 Herbalife was a legitimate multilevel marketing Company, whose revenues are

1 ultimately generated by sales to the general public; or whether Herbalife was a
2 pyramid scheme, whose revenues were dependent on continuous recruitment of other
3 distributors, which were ultimately left sustaining substantial losses on their purchases
4 of the Company's weight loss products. To highlight evidence that Herbalife may
5 indeed operate as a pyramid scheme, Senator Markey pointed to instances where
6 residents of Massachusetts suffered crushing financial setbacks as a result of the
7 Company's marketing practices. According to the Senator, one family in Norton,
8 MA lost \$130,000 from its investments in the Company's products. Another woman
9 said she was pressured to recruit family members and spend more money to buy more
10 Herbalife products so she could qualify as a "supervisor" in the Herbalife system.
11
12
13
14

15 14. On this news, Herbalife stock declined \$7.61 per share, or over 10%, to
16 close at \$65.92 per share on January 23, 2014.
17

18 15. On April 11, 2014, the Financial Times reported that the United States
19 Department of Justice and Federal Bureau of Investigation had opened a criminal
20 probe of Herbalife. On this news, shares of Herbalife spiraled downward from \$59.84
21 to \$51.48, more than 13%.
22

23 16. As a result of defendants' wrongful acts and omissions, and the
24 precipitous decline in the market value of the Company's securities, Plaintiff and
25 other Class members have suffered significant losses and damages.
26
27
28

JURISDICTION AND VENUE

17. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

18. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

19. Venue is proper in this District pursuant to §27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1391(b), as Herbalife's principal place of business is located within this District.

20. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

21. Plaintiff as set forth in the attached Certification, acquired Herbalife securities at artificially inflated prices during the Class Period and has been damaged upon the revelation of the alleged corrective disclosures.

22. Defendant Herbalife is a Cayman Islands corporation with principal executive offices located in this District. Herbalife's common stock trades on the New York Stock Exchange ("NYSE") under the ticker symbol "HLF."

1 23. Defendant Michael O. Johnson (“Johnson”) served at all relevant times
2 as the Company’s the Chairman of the Board of Directors (“Board”) and Chief
3 Executive Officer.
4

5 24. Defendant Desmond Walsh (“Walsh”) served at all relevant times as the
6 Company’s President.
7

8 25. Defendant John DeSimone (“DeSimone”) served at all relevant times as
9 the Company’s Chief Financial Officer.
10

11 26. Defendant Richard Goudis (“Goudis”) served at all relevant times as the
12 Company’s Chief Operating Officer.
13

14 27. The defendants referenced above in ¶¶ 23 - 26 are sometimes referred to
15 herein as the “Individual Defendants.”
16

17 **SUBSTANTIVE ALLEGATIONS**

18 **Background**

19 28. Herbalife is global network marketing company that sells weight
20 management, nutritional supplement, energy, sports & fitness products and personal
21 care products. The Company purports to offer science-based products in four principal
22 categories: weight management, targeted nutrition, energy, sports & fitness and Outer
23 Nutrition. Weight management, targeted nutrition, energy, sports & fitness and Outer
24 Nutrition accounted for 62.5%, 22.8%, 4.9% and 4.3% of its net sales in fiscal year
25 2011, respectively. The Company is one of the largest network marketing companies
26
27
28

1 in the world with net sales of approximately \$4.07 billion for the fiscal year ended
2 December 31, 2012.

3
4 **Materially False and Misleading**
5 **Statements Issued During the Class Period**

6 29. On May 3, 2010, after the market closed, Herbalife issued a press release
7 announcing its financial and operating results for the quarter ended March 31, 2010.
8 For the quarter, the Company reported net income of \$51.9 million, or \$0.83 diluted
9 earnings per share (“EPS”) and net sales of \$619 million, as compared to net income
10 of \$41.5 million, or \$0.67 diluted EPS and net sales of \$522 million for the same
11 period a year ago.
12
13

14 30. On May 3, 2010, the Company filed a quarterly report for the period
15 ended March 31, 2010 on Form 10-Q with the SEC, which was signed by Defendant
16 DeSimone, and reiterated the Company’s previously announced quarterly financial
17 results and financial position. In addition, the Form 10-Q contained signed
18 certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants
19 Johnson and DeSimone, stating that the financial information contained in the Form
20 10-Q was accurate and disclosed any material changes to the Company’s internal
21 control over financial reporting.
22
23
24

25 31. On August 2, 2010, Herbalife issued a press release announcing its
26 financial and operating results for the quarter ended June 30, 2010. For the quarter,
27 the Company reported net income of \$81.9 million, or \$1.32 diluted EPS and net sales
28

1 of \$688.8 million, as compared to net income of \$48.3 million, or \$0.77 diluted EPS,
2 and net sales of \$571.8 million for the same period a year ago.

3
4 32. On August 2, 2010, the Company filed a quarterly report for the period
5 ended June 30, 2010 on Form 10-Q with the SEC, which was signed by Defendant
6 DeSimone, and reiterated the Company's previously announced quarterly financial
7 results and financial position. In addition, the Form 10-Q contained signed
8 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
9 financial information contained in the Form 10-Q was accurate and disclosed any
10 material changes to the Company's internal control over financial reporting.
11
12

13
14 33. On November 1, 2010, Herbalife issued a press release announcing its
15 financial and operating results for the quarter ended September 30, 2010. For the
16 quarter, the Company reported net income of \$75.7 million, or \$1.22 diluted EPS, and
17 net sales of \$688.4 million, as compared to net income of \$57.9 million, or \$0.91
18 diluted EPS, and net sales of \$600.2 million for the same period a year ago.
19

20
21 34. That same day, the Company filed a quarterly report for the period ended
22 September 30, 2010 on Form 10-Q with the SEC, which was signed by Defendant
23 DeSimone, and reiterated the Company's previously announced quarterly financial
24 results and financial position. In addition, the Form 10-Q contained signed
25 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
26
27
28

1 financial information contained in the Form 10-Q was accurate and disclosed any
2 material changes to the Company's internal control over financial reporting.

3
4 35. On February 22, 2011, Herbalife issued a press release announcing its
5 financial and operating results for the quarter and year ended December 31, 2010. For
6 the quarter, the Company reported net income of \$81 million, or \$1.31 diluted EPS
7 and net sales of \$738.4 million, as compared to net income of \$55.7 million or \$0.88
8 diluted EPS and net sales of \$630.9 million for the same period a year ago. For the
9 year, the Company reported net income of \$290.5 million, or \$4.67 diluted EPS and
10 net sales of \$2.7 billion, as compared to net income of \$203 million, or \$3.22 diluted
11 EPS, and net sales of \$2.3 billion for the same period a year ago.

12
13
14
15 36. That same day, the Company filed an annual report for the period ended
16 December 31, 2010 on Form 10-K with the SEC, which was signed by, among others,
17 Defendants Johnson and DeSimone, and reiterated the Company's previously
18 announced annual financial results and financial position. In addition, the Form 10-K
19 contained signed certifications pursuant to SOX by Defendants Johnson and
20 DeSimone, stating that the financial information contained in the Form 10-K was
21 accurate and disclosed any material changes to the Company's internal control over
22 financial reporting.

23
24
25
26 37. The Company represented the following in relevant part concerning its
27 Network Marketing Program:
28

1 We are focused on building and maintaining our distributor network by
2 offering financially rewarding and flexible career opportunities through
3 sales of quality, innovative and efficacious products to health conscious
4 consumers. We believe the income opportunity provided by our network
5 marketing program appeals to a broad cross-section of people throughout
6 the world, particularly those seeking to supplement family income, start a
7 home business or pursue entrepreneurial, full or part-time, employment
8 opportunities. Our distributors, who are independent contractors, can
9 profit from selling our products and can also earn royalties and bonuses
10 on sales made by the other distributors whom they recruit to join their
11 sales organizations.

12 ***

13 To become a distributor in most markets, a person must be sponsored by
14 an existing distributor and must purchase an International Business Pack,
15 or IBP. The IBP is a distributor kit available in local languages. The
16 product and literature contents in the kits vary slightly to meet individual
17 market needs. An example is the large size U.S. IBP, which costs \$90.95
18 and includes a canister of Formula 1 shake mix, two bottles of nutritional
19 supplements, Herbal Concentrate (Tea), *Liftoff*® (an energy drink), and
20 Hand Sanitizer, along with a handy tote, booklets describing us, our
21 compensation plan and rules of conduct, various training and promotional
22 materials, distributor applications and a product catalog. The smaller U.S.
23 version costs \$54.95 and includes sample products, a handy tote, and
24 essentially the same print and promotional materials as included in the
25 larger kit version. To become a sales leader, or qualify for a higher level,
26 including the Qualified Producer level introduced in October 2009,
27 distributors must achieve specified volumes of product sales or earn
28 certain amounts of royalty overrides during specified time periods and
must re-qualify for the levels once each year. To attain sales leader status,
a distributor generally must be responsible for sales of products
representing at least 4,000 volume points in one month or 2,500 volume
points in two consecutive months. An additional optional qualification,
introduced globally in October 2009, allows for a distributor to achieve
sales leader level by personally placing orders with Herbalife that
accumulate to 5,000 Volume Points within 12 months.

1 38. On May 2, 2011, Herbalife issued a press release announcing its financial
2 and operating results for the quarter ended March 31, 2011. For the quarter, the
3 Company reported net income of \$87.6 million, or \$1.41 diluted EPS, and net sales of
4 \$795 million, as compared to net income of \$51.9 million, or \$0.83 diluted EPS and
5 net sales of \$619 million for the same period a year ago.
6
7

8 39. On May 2, 2011, the Company filed a quarterly report for the period
9 ended March 31, 2011 on Form 10-Q with the SEC, which was signed by Defendant
10 DeSimone, and reiterated the Company's previously announced quarterly financial
11 results and financial position. In addition, the Form 10-Q contained signed
12 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
13 financial information contained in the Form 10-Q was accurate and disclosed any
14 material changes to the Company's internal control over financial reporting.
15
16

17 40. On August 1, 2011, Herbalife issued a press release announcing its
18 financial and operating results for the quarter ended June 30, 2011. For the quarter,
19 the Company reported net income of \$111.2 million, or \$0.88 diluted EPS, and net
20 sales of \$879.7 million, as compared to net income of \$82.2 million, or \$0.65 diluted
21 EPS, and net sales of \$688.8 million for the same period a year ago.
22
23

24 41. That same day, the Company filed a quarterly report for the period ended
25 June 30, 2011 on Form 10-Q with the SEC, which was signed by Defendant
26 DeSimone, and reiterated the Company's previously announced quarterly financial
27
28

1 results and financial position. In addition, the Form 10-Q contained signed
2 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
3 financial information contained in the Form 10-Q was accurate and disclosed any
4 material changes to the Company's internal control over financial reporting.
5

6
7 42. On October 31, 2011, Herbalife issued a press release announcing its
8 financial and operating results for the quarter ended September 30, 2011. For the
9 quarter, the Company reported net income of \$108 million, or \$0.87 diluted EPS, and
10 net sales of \$895 million, as compared to net income of \$78.9 million, or \$0.63
11 diluted EPS and net sales of \$688.4 million for the same period a year ago.
12

13
14 43. That same day, the Company filed a quarterly report for the period ended
15 September 30, 2011 on Form 10-Q with the SEC, which was signed by Defendant
16 DeSimone, and reiterated the Company's previously announced quarterly financial
17 results and financial position. In addition, the Form 10-Q contained signed
18 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
19 financial information contained in the Form 10-Q was accurate and disclosed any
20 material changes to the Company's internal control over financial reporting.
21
22

23
24 44. On February 21, 2012, Herbalife issued a press release announcing its
25 financial and operating results for the quarter and year ended December 31, 2011. For
26 the quarter, the Company reported net income of \$105.4 million, or \$0.86 diluted EPS
27 and net sales of \$884.6 million, as compared to net income of \$86.3 million or \$0.69
28

1 diluted EPS and net sales of \$738.4 million for the same period a year ago. For the
2 year, the Company reported net income of \$412.6 million, or \$3.30 diluted EPS and
3 net sales of \$3.5 billion, as compared to net income of \$299.2 million, or \$2.37 diluted
4 EPS and net sales of \$2.7 billion for the same period a year ago.
5

6
7 45. On February 21, 2012, the Company filed an annual report for the period
8 ended December 31, 2011 on Form 10-K with the SEC, which was signed by, among
9 others, Defendants Johnson and DeSimone, and reiterated the Company's previously
10 announced annual financial results and financial position. In addition, the Form 10-K
11 contained signed certifications pursuant to SOX by Defendants Johnson and
12 DeSimone, stating that the financial information contained in the Form 10-K was
13 accurate and disclosed any material changes to the Company's internal control over
14 financial reporting.
15
16

17
18 46. The Company represented the following in relevant part concerning its
19 Network Marketing Program:

20 We are focused on building and maintaining our distributor network by
21 offering financially rewarding and flexible career opportunities through
22 sales of quality, innovative and efficacious products to health conscious
23 consumers. We believe the income opportunity provided by our network
24 marketing program appeals to a broad cross-section of people throughout
25 the world, particularly those seeking to supplement family income, start a
26 home business or pursue entrepreneurial, full or part-time employment
27 opportunities. Our distributors, who are independent contractors, can
28 profit from selling our products and can also earn royalties and bonuses
on sales made by the other distributors whom they recruit to join their
sales organizations.

Our products are distributed through a global network marketing organization comprised of approximately 2.7 million independent distributors in 79 countries as of December 31, 2011, including China where, due to regulations, our sales are conducted through Company operated retail stores, sales representatives, sales officers and independent service providers. In China, in the areas where we have a direct selling license, our representatives, officers and independent service providers can sell Herbalife product outside the retail establishments. In addition to helping our distributors achieve their goals of health and wellness through use of our products, we offer our distributors, who are independent contractors, attractive income opportunities. Distributors may earn income on their own sales and can also earn royalties and bonuses on sales made by the distributors in their sales organizations. We believe that our products are particularly well-suited to the network marketing distribution channel because sales of weight management and health and wellness products are strengthened by ongoing personal contact and coaching of retail consumers by distributors. We believe our continued commitment to developing innovative, science-based products will enhance our ability to attract new distributors as well as increase the productivity and retention of existing distributors. Furthermore, our international sponsorship program, which permits distributors to sponsor distributors in other countries where we are licensed to do business and where we have obtained required product approvals, provides a significant advantage to our distributors in developing and growing their businesses.

47. On April 30, 2012, Herbalife issued a press release announcing its financial and operating results for the quarter ended March 31, 2012. For the quarter, the Company reported net income of \$108.2 million, or \$0.88 diluted EPS, and net sales of \$964.2 million, as compared to net income of \$88 million, or \$0.70 diluted EPS and net sales of \$795 million for the same period a year ago.

48. On April 30, 2012, the Company filed a quarterly report for the period ended March 31, 2012 on Form 10-Q with the SEC, which was signed by Defendant

1 DeSimone, and reiterated the Company's previously announced quarterly financial
2 results and financial position. In addition, the Form 10-Q contained signed
3 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
4 financial information contained in the Form 10-Q was accurate and disclosed any
5 material changes to the Company's internal control over financial reporting.
6
7

8 49. On May 1, 2012, the Company held an analyst conference call to discuss
9 its first quarter 2012 financial results. During the Q&A session, David Einhorn,
10 Chairman of Greenlight Capital Re. Ltd. asked a series of questions:
11

12 Einhorn: I got a couple questions for you. First is, how much of the sales
13 that you've made, in terms of final sales, are sold outside the network, and
14 how much are consumed within the distributor base?

15 Walsh: So David, we have a 70% custom rule, which is – which
16 effectively says that 70% of all products is sold to consumers or actually
17 consumed by distributors for their own personal use. So obviously, what
18 we've seen with nutrition clubs is that we now have visibility for the first
19 time to our customers. You know that we reported on this call for the first
20 time the number of commercial clubs around the world, which is in excess
21 of 30,000, so that has given us visibility to the tremendous amount of
22 products that are being sold directly to the consumers, and we see that as a
23 growing trend in our business.

24 Einhorn: So what is the percentage that actually sold to consumers that are
25 not distributors?

26 Walsh: So we don't have an exact percentage, David, because we don't
27 have visibility to that level of detail.

28 Einhorn: Do you have an approximation?

Walsh: So well, again, going back to our 70% rule, we believe that it's
that 70% or potentially in excess of that.

1 Einhorn: Okay. What is the incentive for a supervisor to sign somebody
2 up to become a distributor as opposed to – if they’re just going to
3 consume for themselves – as opposed to just selling them the product for
4 the markup. How does the distributor – how does a supervisor come out
better?

5 Walsh: Sure, And so, I think there’s two reasons for that. So we know
6 from our business today that many of our future supervisors and business
7 builders come in as customers and then they become distributors. So the
8 benefit from a supervisor is the ability for greater retention of that
customer/distributor because they are now earning a 25% discount.

9 The second issue is that it preserves lineage. So obviously, if I sign you
10 up, David, as a distributor, my hope and my expectation is that based on
11 the tremendous product result that you’re going to achieve, that you’ll
12 have friends and families go to you and say, gosh, David, you look great,
13 what are you on; you’re going to respond and say, “I’m on Herbalife.”
14 And that will encourage you to say, wow, maybe this is a business
15 opportunity I could be interested in. So the benefit for me as your
16 supervisor is, one the discount that that you would get and therefore my
greater likelihood of retaining you as a permanent customer; and
17 secondly, the hope that at some stage, you will decide to do the business
and, therefore, that you are already in my lineage and as part of my group.

18 Einhorn: Right. But just so I understand this clearly, if I sell to a
19 customer – I bought at – I’m a supervisor; I buy at a 50% discount; I sell
20 to a customer; I make 50 points, if he pays the full price. If he signs up as
21 a distributor and buys it himself, I get - he gets a 25% discount, and I get
seven points as a royalty. Is that how it works?

22 Walsh: No, you would get – you would get the other 25%.

23 Einhorn: I’d get 25% plus the 7.

24 Walsh: So unless you’re in royalties, you would simply earn in the
25 difference. So you earn a 50% discount, you’re selling at a 25% discount,
26 and so the difference between the two.

27 Einhorn: Right
28

1 Walsh: Is your profit is on that sale.

2 Einhorn: Right, So if he signs up as a distributor and buys it for himself
3 from Herbalife, I still get the 25%?

4 Walsh: That is correct.

5
6 Einhorn: Okay. Good. One last question. When you had your previous
7 10-K, you disclosed three groups of distributors at the low-end. You
8 called 29% self consumers, 57% small retailers, and 14% potential sales
9 leaders. And then that disclosure did not repeat in the subsequent 10-K.
10 So I've got two questions. First of all, how do you track that and how do
11 you characterize and know which ones are which? And second, why did
12 you stop disclosing that in the last 10-K? Is that something that you've
13 stopped tracking or just stopped disclosing?

14 DeSimone: David, hi. This is John. The criteria for grouping distributors
15 into different classes was based off of their volume purchases, and we're
16 making assumptions that people below a certain volume weren't doing the
17 business, they were buying self-consumption – and I don't remember the
18 exact amounts, but I can get it to you after the call – is how we delineated
19 between the three classes.

20 And one- the reason we took it out of the 10-K is a change in CFO from
21 Rich to me. I didn't view it as valuable information to the business or to
22 the investors. However, we can easily provide the exact same breakout
23 going forward if you'd like....

24 50. As a result of Einhorn's stated skepticism regarding the Company's
25 business model, Herbalife declined \$14.02 per share or nearly 20%, to close at \$56.30
26 per share on May 1, 2012. The stock declined an additional \$10.10 per share or
27 nearly 18%, to close at \$46.20 per share on May 3, 2012.

28 51. On July 30, 2012, Herbalife issued a press release announcing its
financial and operating results for the quarter ended June 30, 2012. For the quarter,

1 the Company reported net income of \$133.4 million, or \$1.10 diluted EPS, and net
2 sales of \$1 billion, as compared to net income of \$111.2 million, or \$0.88 diluted EPS
3 and net sales of \$879.7 million for the same period a year ago.
4

5 52. On July 30, 2012, the Company filed a quarterly report for the period
6 ended June 30, 2012 on Form 10-Q with the SEC, which was signed by Defendant
7 DeSimone, and reiterated the Company's previously announced quarterly financial
8 results and financial position. In addition, the Form 10-Q contained signed
9 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
10 financial information contained in the Form 10-Q was accurate and disclosed any
11 material changes to the Company's internal control over financial reporting.
12
13
14

15 53. On October 29, 2012, Herbalife issued a press release announcing its
16 financial and operating results for the quarter ended September 30, 2012. For the
17 quarter, the Company reported net income of \$117.8 million, or \$1.04 diluted EPS,
18 and net sales of \$1 billion, as compared to net income of \$108 million, or \$0.87
19 diluted EPS and net sales of \$895 million for the same period a year ago.
20
21

22 54. That same day, the Company filed a quarterly report for the period ended
23 September 30, 2012 on Form 10-Q with the SEC, which was signed by Defendant
24 DeSimone, and reiterated the Company's previously announced quarterly financial
25 results and financial position. In addition, the Form 10-Q contained signed
26 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
27
28

1 financial information contained in the Form 10-Q was accurate and disclosed any
2 material changes to the Company's internal control over financial reporting.
3

4 **THE TRUTH BEGINS TO EMERGE**

5 55. On December 19, 2012, CNBC reported that Ackman considers
6 Herbalife to be a pyramid scheme after spending a year researching the Company's
7 fundamentals.
8

9 56. On this news, Herbalife stock declined \$5.16 per share, or over 12%, to
10 close at \$37.34 per share on December 19, 2012.
11

12 57. On December 20, 2012, Ackman conducted a presentation concerning
13 Herbalife at the Sohn Investment Conference, alleging that the Company has been
14 misrepresenting sales figures, misleading distributors about potential earnings and
15 selling a commodity product at inflated prices. Ackman said that since the founding
16 of the Company, approximately 1.9 million distributors have failed to make any
17 money from selling Herbalife products, costing them about \$2,000 each in the process
18 for supplies, training and sales leads, for a total net loss of \$3.8 billion. Ackman
19 concluded that Herbalife is a pyramid scheme as its distributors make more money by
20 recruiting other distributors than selling the Company's products to the general public.
21 Moreover, the top 1% of Herbalife distributors earn a greater share of total
22 commissions compared to other multi-level marketing companies.
23
24
25
26
27
28

1 58. On this news, Herbalife stock declined \$10.07 per share, or over 27%,
2 over the next two trading sessions, to close at \$27.27 per share on December 21, 2012.

3
4 59. On January 18, 2013, Herbalife issued a press release announcing its
5 financial and operating results for the quarter and year ended December 31, 2012. For
6 the quarter, the Company reported net income of \$117.8 million, or \$1.05 diluted EPS
7 and net sales of \$1.1 billion, as compared to net income of \$105.4 million or \$0.86
8 diluted EPS and net sales of \$884.6 million for the same period a year ago. For the
9 year, the Company reported net income of \$477.2 million, or \$4.05 diluted EPS and
10 net sales of \$4.07 billion, as compared to net income of \$412.6 million, or \$3.30
11 diluted EPS and net sales of \$3.45 billion for the same period a year ago.

12
13
14
15 60. On February 19, 2013, the Company filed an annual report for the period
16 ended December 31, 2012 on Form 10-K with the SEC, which was signed by, among
17 others, Defendants Johnson and DeSimone, and reiterated the Company's previously
18 announced annual financial results and financial position. In addition, the Form 10-K
19 contained signed certifications pursuant to SOX by Defendants Johnson and
20 DeSimone, stating that the financial information contained in the Form 10-K was
21 accurate and disclosed any material changes to the Company's internal control over
22 financial reporting.

23
24
25
26 61. The Company represented the following in relevant part concerning its
27 Network Marketing Program:
28

1 Our products are distributed through a global network marketing
2 organization comprised of approximately 3.2 million independent
3 distributors, many of whom are simply discount customers, operating in 88
4 countries as of December 31, 2012. In China, due to local regulations, our
5 sales are conducted through Company operated retail stores, sales
6 representatives, sales officers and independent service providers; in the
7 areas where we have a direct selling license, our representatives, officers
8 and independent service providers can sell Herbalife product outside of the
9 retail establishments.

10 In addition to helping our distributors and their customers achieve their
11 goals of health and wellness through consumption of our products, we
12 offer our distributors, who are independent contractors, a potential income
13 opportunity. Distributors may earn income on their own retail sales and
14 can also earn commissions, such as royalties and bonuses, based on
15 purchases of our products made by their sales organization for
16 consumption or resale.

17 ***

18 To become a distributor in most markets, a person must be sponsored by
19 an existing distributor and must purchase an International Business Pack,
20 or IBP. The IBP is a distributor kit available in local languages which
21 typically includes product samples, a handy tote, booklets describing us,
22 our compensation plan and rules of distributor conduct, various training
23 and promotional materials, distributor applications and a product catalog.
24 The cost of an IBP varies by market and provides a low cost entry for
25 incoming distributors. IBPs have no Volume Point value and therefore do
26 not generate any distributor compensation and cannot be used for
27 distributor qualifications or recognition purposes under the Company's
28 marketing plan. Volume Points are point values assigned to each of our
products for use by the Company to determine a distributor's sales
achievement level. We assign a Volume Point value to a product when it is
first introduced into a market and the value is unaffected by subsequent
exchange rate and price changes. The specific number of Volume Points
assigned to a product, generally consistent across all markets, is based on a
Volume Point to suggested retail price ratio for similar products in the
market.

1 To become a sales leader, or qualify for a higher level, distributors must
2 achieve specified volume thresholds of product sales or earn certain
3 amounts of royalty overrides during specified time periods and must re-
4 qualify once each year. To attain sales leader status, a distributor generally
5 must be responsible for sales of products representing at least 4,000
6 volume points in one month or 2,500 volume points in two consecutive
7 months. An additional optional qualification, introduced globally in
8 October 2009, allows for a distributor to achieve sales leader level by
9 personally placing orders with Herbalife that accumulate to 5,000 volume
10 points within 12 months.

11 62. On April 29, 2013, Herbalife issued a press release announcing its
12 financial and operating results for the quarter ended March 31, 2013. For the quarter,
13 the Company reported net income of \$118.8 million, or \$1.10 diluted EPS and net
14 sales of \$1.1 billion, as compared to net income of \$108.2 million, or \$0.88 diluted
15 EPS and net sales of \$964.2 million for the same period a year ago.

16 63. That same day, the Company filed a quarterly report for the period ended
17 March 31, 2013 on Form 10-Q with the SEC, which was signed by Defendant
18 DeSimone, and reiterated the Company's previously announced quarterly financial
19 results and financial position. In addition, the Form 10-Q contained signed
20 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
21 financial information contained in the Form 10-Q was accurate and disclosed any
22 material changes to the Company's internal control over financial reporting.
23

24 64. On July 29, 2013, Herbalife issued a press release announcing its
25 financial and operating results for the quarter ended June 30, 2013. For the quarter,
26 the Company reported net income of \$143.2 million, or \$1.34 diluted EPS, and net
27 sales of \$1.1 billion, as compared to net income of \$108.2 million, or \$0.88 diluted
28 EPS and net sales of \$964.2 million for the same period a year ago.

1 sales of \$1.2 billion, as compared to net income of \$133.4 million, or \$1.10 diluted
2 EPS and net sales of \$1 billion for the same period a year ago.

3
4 65. That same day, the Company filed a quarterly report for the period ended
5 June 30, 2013 on Form 10-Q with the SEC, which was signed by Defendant
6 DeSimone, and reiterated the Company's previously announced quarterly financial
7 results and financial position. In addition, the Form 10-Q contained signed
8 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
9 financial information contained in the Form 10-Q was accurate and disclosed any
10 material changes to the Company's internal control over financial reporting.
11

12
13 66. On October 28, 2013, Herbalife issued a press release announcing its
14 financial and operating results for the quarter ended September 30, 2013. For the
15 quarter, the Company reported net income of \$142 million, or \$1.32 diluted EPS, and
16 net sales of \$1.2 billion, as compared to net income of \$117.8 million, or \$1.04 diluted
17 EPS and net sales of \$1 billion for the same period a year ago.
18

19
20 67. That same day, the Company filed a quarterly report for the period ended
21 September 30, 2013 on Form 10-Q with the SEC, which was signed by Defendant
22 DeSimone, and reiterated the Company's previously announced quarterly financial
23 results and financial position. In addition, the Form 10-Q contained signed
24 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the
25
26
27
28

1 financial information contained in the Form 10-Q was accurate, and disclosed any
2 material changes to the Company's internal control over financial reporting.

3
4 68. On January 15, 2014, a leading Chinese newspaper reported that Nu Skin
5 Enterprises, Inc. ("Nu Skin"), a company that operates in the same industry and uses a
6 similar business model as Herbalife, was an illegal pyramid scheme in China, and
7 employs unlawful and immoral business practices in violation of PRC law.

8
9 69. Thereafter, on January 16, 2014, Nu Skin disclosed that its business
10 practices were indeed under investigation by Chinese authorities, stating in relevant
11 part:
12

13 We are aware that Chinese regulators have now initiated
14 investigations to review issues raised by recent news reports. The
15 government regularly monitors all businesses in this rapidly
16 growing marketplace, and as is our practice, we will continue to
17 communicate openly with regulators to address any questions they
18 may have.

19 70. On this news, Herbalife stock, over the two trading days of January 15,
20 2014, and January 16, 2014, declined \$9.16 or over 11%, to close at \$71.63.

21 71. On January 23, 2014, U.S. Senator Edward J. Markey of Massachusetts
22 sent letters to federal regulators, including the SEC and the FTC urging them to
23 investigate Herbalife. Mr. Markey also sent a letter to Herbalife's chief executive,
24 Michael O. Johnson asking several questions about the company's business, including
25 pointed requests that reflected the concerns raised by Ackman in December 2012.
26 Some of the questions asked in the letter to Herbalife included: (1) "How much profit
27
28

(net earnings after expenses) can the average distributor expect to make from retailing to non-distributors (*i.e.*, people who are not directly involved in Herbalife themselves)?”; and (2) “What’s the correct number of sales outside the network as a percentage of total sales” for each of the last five years and information on these sales measured by product, quantity and dollars. Moreover, Senator Markey pressed the FTC and SEC to investigate whether Herbalife operated a pyramid scheme, providing specific examples of deceptive and harmful trade practices occurring in Massachusetts.

72. On this news, Herbalife stock declined \$7.61 per share, or over 10%, to close at \$65.92 per share on January 23, 2014.

73. On April 11, 2014, the Financial Times reported that the United States Department of Justice and Federal Bureau of Investigation had opened a criminal probe of Herbalife. On this news, shares of Herbalife spiraled downward from \$59.84 to \$51.48, more than 13%.

74. The statements referenced in ¶¶ 29-54 and 59-67 above, were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts, which were known to defendants or recklessly disregarded by them, including that: (i) the Company operated a pyramid scheme whereby its distributors primarily generated revenue by recruiting other distributors rather than selling Herbalife’s diet and nutritional products to the general public; (ii) the

1 Company engaged in deceptive trade practices as it unduly pressured its customers to
2 purchase more products to resell as one of its “distributors”; and (iii) as a result of the
3 above, the Company’s financial statements were materially false and misleading at all
4 relevant times.
5

6
7 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

8 75. Plaintiff brings this action as a class action pursuant to Federal Rule of
9 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
10 purchased or otherwise acquired Herbalife securities during the Class Period (the
11 “Class”); and were damaged upon the revelation of the alleged corrective disclosures.
12 Excluded from the Class are defendants herein, the officers and directors of the
13 Company, at all relevant times, members of their immediate families and their legal
14 representatives, heirs, successors or assigns and any entity in which defendants have
15 or had a controlling interest.
16
17
18

19 76. The members of the Class are so numerous that joinder of all members is
20 impracticable. Throughout the Class Period, Herbalife securities were actively traded
21 on the NYSE. While the exact number of Class members is unknown to Plaintiff at
22 this time and can be ascertained only through appropriate discovery, Plaintiff believes
23 that there are hundreds or thousands of members in the proposed Class. Record
24 owners and other members of the Class may be identified from records maintained by
25 Herbalife or its transfer agent and may be notified of the pendency of this action by
26
27
28

1 mail, using the form of notice similar to that customarily used in securities class
2 actions.

3
4 77. Plaintiff's claims are typical of the claims of the members of the Class as
5 all members of the Class are similarly affected by defendants' wrongful conduct in
6 violation of federal law that is complained of herein.

7
8 78. Plaintiff will fairly and adequately protect the interests of the members of
9 the Class and has retained counsel competent and experienced in class and securities
10 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the
11 Class.
12

13 79. Common questions of law and fact exist as to all members of the Class
14 and predominate over any questions solely affecting individual members of the Class.
15 Among the questions of law and fact common to the Class are:
16

- 17
- 18 • whether the federal securities laws were violated by defendants' acts
19 as alleged herein;
 - 20 • whether statements made by defendants to the investing public during
21 the Class Period misrepresented material facts about the business,
22 operations and management of Herbalife;
 - 23 • whether the Individual Defendants caused Herbalife to issue false and
24 misleading financial statements during the Class Period;
 - 25
 - 26
 - 27
 - 28

- whether defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Herbalife securities during the Class Period were artificially inflated because of the defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

80. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

81. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Herbalife securities are traded in an efficient market;

- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NYSE and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Herbalife securities between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

82. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

COUNT I

(Against All Defendants For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder)

83. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

84. This Count is asserted against defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

1 85. During the Class Period, defendants engaged in a plan, scheme,
2 conspiracy and course of conduct, pursuant to which they knowingly or recklessly
3 engaged in acts, transactions, practices and courses of business which operated as a
4 fraud and deceit upon Plaintiff and the other members of the Class; made various
5 untrue statements of material facts and omitted to state material facts necessary in
6 order to make the statements made, in light of the circumstances under which they
7 were made, not misleading; and employed devices, schemes and artifices to defraud in
8 connection with the purchase and sale of securities. Such scheme was intended to,
9 and, throughout the Class Period, did: (i) deceive the investing public, including
10 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and
11 maintain the market price of Herbalife securities; and (iii) cause Plaintiff and other
12 members of the Class to purchase or otherwise acquire Herbalife securities and
13 options at artificially inflated prices. In furtherance of this unlawful scheme, plan and
14 course of conduct, defendants, and each of them, took the actions set forth herein.
15
16
17
18
19

20 86. Pursuant to the above plan, scheme, conspiracy and course of conduct,
21 each of the defendants participated directly or indirectly in the preparation and/or
22 issuance of the quarterly and annual reports, SEC filings, press releases and other
23 statements and documents described above, including statements made to securities
24 analysts and the media that were designed to influence the market for Herbalife
25 securities. Such reports, filings, releases and statements were materially false and
26
27
28

1 misleading in that they failed to disclose material adverse information and
2 misrepresented the truth about Herbalife's finances and business prospects.

3
4 87. By virtue of their positions at Herbalife, defendants had actual
5 knowledge of the materially false and misleading statements and material omissions
6 alleged herein and intended thereby to deceive Plaintiff and the other members of the
7 Class, or, in the alternative, defendants acted with reckless disregard for the truth in
8 that they failed or refused to ascertain and disclose such facts as would reveal the
9 materially false and misleading nature of the statements made, although such facts
10 were readily available to defendants. Said acts and omissions of defendants were
11 committed willfully or with reckless disregard for the truth. In addition, each
12 defendant knew or recklessly disregarded that material facts were being
13 misrepresented or omitted as described above.
14
15
16

17
18 88. Defendants were personally motivated to make false statements and omit
19 material information necessary to make the statements not misleading in order to
20 personally benefit from the sale of Herbalife securities from their personal portfolios.
21

22 89. Information showing that defendants acted knowingly or with reckless
23 disregard for the truth is peculiarly within defendants' knowledge and control. As the
24 senior managers and/or directors of Herbalife, the Individual Defendants had
25 knowledge of the details of Herbalife's internal affairs.
26
27
28

1 90. The Individual Defendants are liable both directly and indirectly for the
2 wrongs complained of herein. Because of their positions of control and authority, the
3 Individual Defendants were able to and did, directly or indirectly, control the content
4 of the statements of Herbalife. As officers and/or directors of a publicly-held
5 company, the Individual Defendants had a duty to disseminate timely, accurate, and
6 truthful information with respect to Herbalife's businesses, operations, future financial
7 condition and future prospects. As a result of the dissemination of the aforementioned
8 false and misleading reports, releases and public statements, the market price of
9 Herbalife securities was artificially inflated throughout the Class Period. In ignorance
10 of the adverse facts concerning Herbalife's business and financial condition which
11 were concealed by defendants, Plaintiff and the other members of the Class purchased
12 or otherwise acquired Herbalife securities at artificially inflated prices and relied upon
13 the price of the securities, the integrity of the market for the securities and/or upon
14 statements disseminated by defendants, and were damaged thereby.

15 91. During the Class Period, Herbalife securities were traded on an active
16 and efficient market. Plaintiff and the other members of the Class, relying on the
17 materially false and misleading statements described herein, which the defendants
18 made, issued or caused to be disseminated, or relying upon the integrity of the market,
19 purchased or otherwise acquired shares of Herbalife securities at prices artificially
20 inflated by defendants' wrongful conduct. Had Plaintiff and the other members of the
21
22
23
24
25
26
27
28

1 Class known the truth, they would not have purchased or otherwise acquired said
2 securities, or would not have purchased or otherwise acquired them at the inflated
3 prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and
4 the Class, the true value of Herbalife securities was substantially lower than the prices
5 paid by Plaintiff and the other members of the Class. The market price of Herbalife
6 securities declined sharply upon public disclosure of the facts alleged herein to the
7 injury of Plaintiff and Class members.

10 92. By reason of the conduct alleged herein, defendants knowingly or
11 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and
12 Rule 10b-5 promulgated thereunder.

14 93. As a direct and proximate result of defendants' wrongful conduct,
15 Plaintiff and the other members of the Class suffered damages in connection with
16 their respective purchases, acquisitions and sales of the Company's securities during
17 the Class Period, upon the disclosure that the Company had been disseminating
18 misrepresented financial statements to the investing public.

21 **COUNT II**

22 **(Violations of Section 20(a) of the** 23 **Exchange Act Against The Individual Defendants)**

24 94. Plaintiff repeats and realleges each and every allegation contained in the
25 foregoing paragraphs as if fully set forth herein.

1 95. During the Class Period, the Individual Defendants participated in the
2 operation and management of Herbalife, and conducted and participated, directly and
3 indirectly, in the conduct of Herbalife's business affairs. Because of their senior
4 positions, they knew the adverse non-public information about Herbalife's
5 misstatement of income and expenses and false financial statements.
6
7

8 96. As officers and/or directors of a publicly owned company, the Individual
9 Defendants had a duty to disseminate accurate and truthful information with respect to
10 Herbalife's financial condition and results of operations, and to correct promptly any
11 public statements issued by Herbalife which had become materially false or
12 misleading.
13
14

15 97. Because of their positions of control and authority as senior officers, the
16 Individual Defendants were able to, and did, control the contents of the various
17 reports, press releases and public filings which Herbalife disseminated in the
18 marketplace during the Class Period concerning Herbalife's results of operations.
19 Throughout the Class Period, the Individual Defendants exercised their power and
20 authority to cause Herbalife to engage in the wrongful acts complained of herein. The
21 Individual Defendants therefore, were "controlling persons" of Herbalife within the
22 meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in
23 the unlawful conduct alleged which artificially inflated the market price of Herbalife
24 securities.
25
26
27
28

1 other costs; and

2 D. Awarding such other and further relief as this Court may deem just and
3
4 proper.

5 **DEMAND FOR TRIAL BY JURY**

6 Plaintiff hereby demands a trial by jury.

7
8 Dated: April 14, 2014

GLANCY BINKOW & GOLDBERG LLP

9 By: s/ Lionel Z. Glancy
10 Lionel Z. Glancy
11 Michael Goldberg
12 Robert V. Prongay
13 1925 Century Park East, Suite 2100
14 Los Angeles, California 90067
15 Telephone: (310) 201-9150
16 Facsimile: (310) 201-9160
17 E-mail: info@glancylaw.com
18 lglancy@glancylaw.com
19 mmgoldberg@glancylaw.com
20 rprongay@glancylaw.com

21 **POMERANTZ LLP**

22 Marc I. Gross
23 Jeremy A. Lieberman
24 600 Third Avenue, 20th Floor
25 New York, New York 10016
26 Telephone: (212) 661-1100
27 Facsimile: (212) 661-8665
28 migross@pomlaw.com
jalieberman@pomlaw.com

POMERANTZ LLP

Patrick V. Dahlstrom
Ten South LaSalle Street, Suite 3505
Chicago, Illinois 60603
Telephone: (312) 377-1181
Facsimile: (312) 377-1184
pdahlstrom@pomlaw.com

Attorneys for Plaintiff

**CERTIFICATION PURSUANT
TO FEDERAL SECURITIES LAWS**

1. I, ABDUL AAL AWAD, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 (“Securities Act”) and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) as amended by the Private Securities Litigation Reform Act of 1995.

2. I have reviewed a Complaint against Herbalife Ltd. (“Herbalife” or the “Company”), and authorize the filing of a comparable complaint on my behalf.

3. I did not purchase or acquire Herbalife securities at the direction of plaintiffs counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.

4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired Herbalife securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.

5. To the best of my current knowledge, the attached sheet lists all of my transactions in Herbalife securities during the Class Period as specified in the Complaint.

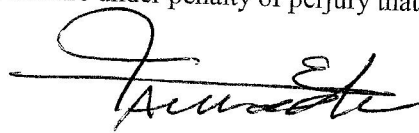
6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed

(Date)



APRIL 12, 2014



(Signature)

ABDUL AAL AWAD

(Type or Print Name)

HERBALIFE INTERNATIONAL, INC.

Awad, Abdul

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHS/UTS	PRICE PER SH/UT
12/06/2013	PUR	100	\$74.3300
12/30/2013	PUR	150	\$77.3000
01/24/2014	PUR	100	\$63.2600
01/28/2014	SLD	100	\$62.0500
02/19/2014	SLD	100	\$66.6201
03/03/2014	SLD	50	\$65.5600